



# State of Delaware

## Department of Labor

### **25th Annual Report on the Status of Workers' Compensation Case Management**

**January, 2023**

## 2022 Highlights

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The Department of Labor is proud of the continuing progress in the processing of workers' compensation cases. The Department wants to thank the members of the Industrial Accident Board for their hard work in adjudicating cases, the Workers' Compensation Oversight Panel for their substantial efforts in fine-tuning the Health Care Payment System, and the members of the Delaware General Assembly for their ongoing support.

Reflecting on the work accomplished in 2022, several issues stand out as having tremendous and far-reaching effects on Workers' Compensation in Delaware:

1. OWC continues to work to address the problem of employers operating in Delaware without workers' compensation insurance coverage with the hiring of 3 (one for each county) Labor Law Enforcement Officers in Spring of 2021. Our efforts began and continue with steps to educate employers about workers' compensation and what is required of them. The efforts of this unit secured over 344 Workers Compensation policies that covered previously uninsured employees working in the State of Delaware. This also generated income for the Workers' Compensation Fund (see #3).
2. From an operational standpoint, the Office of Workers' Compensation has continued its modernization efforts. The Office of Workers' Compensation has finished the process of digitizing all purged files. In 2019, the launch of accepting Petitions electronically was introduced through the on-line portal system. The submission of First Report of Injuries and requests for public documents capabilities is available in the portal, as well. The online portal is used by insurance carriers to submit direct paid loss information and the statement of premiums. The self-insured businesses use the online portal to submit payroll classifications. This electronic submission is in lieu of paper document submission which then required staff to input the data. In September of 2022, the OWC completed the process with PMA (a third-party

administrator for the State of Delaware and others) of a daily file exchange of First Report of Injuries. This resulted in a 30% increase in electronic filings. The Office of Workers' Compensation introduced a new email box for the acceptance of Agreements & Receipts, and First Report of Injuries. This new process has proven effective as the turnaround time from mail submission to completion is cut in half. In the beginning of 2023, we will be adding a Pre-trial Memo email box. The processing of agreement and receipt documents was transferred from the fiscal unit to the Workers' Compensation unit in the Fall of 2021. The OWC revamped all forms to ensure consistency and made them all available on the website in a PDF format.

3. The Workers' Compensation Fund (Second Injury Fund) is a fund that the Department of Labor, Office of Workers' Compensation oversees. The Workers' Compensation Fund provides lost wage payments to Claimants either while litigation is pending or when Claimant has incurred a second injury. In the summer of 2021 the Office of Workers' Compensation has obtained dedicated legal resources for the Workers' Compensation Fund. Based on the efforts of the group, the OWC was able to reduce the tax assessment to Insurance carriers by 1% for 2022. The tax assessment is based on Insurance carriers Statement of Premiums for policies written.
4. In 2022, the OWC outfitted the 3 Hearing rooms (2-Wilmington Fox Valley & 1 Dover) with video equipment in accordance with SB94. This allowed for virtual hearings. In the fall of 2022, the IAB and OWC started holding motion days via video. Protocols are in place for pro-se claimants and disfigurement petitions.
5. The OWC will continue to look for ways to streamline processes as we modernize technology for the benefit of both staff and members of the public.

The Office of Workers Compensation takes pride in its updated website full of valuable information and links, including a list of available services, the ability to search for employer insurance coverage, access to the Workers' Compensation Act, frequently asked questions, and forms:

<http://dia.delawareworks.com/workers-comp/>

### Workers' Compensation Oversight Panel (WCOP)

On October 31, 2022, the Insurance Commissioner announced that workers' compensation rates for 2023 would decrease on average 19.72% for the residual market and 14.76 % for the voluntary market. This is the sixth consecutive year Workers' Compensation insurance rates have dropped. OWC will continue to provide the administrative support necessary for the Workers' Compensation Oversight Panel to further its efforts at reducing costs associated with the past increases in workers' compensation rates.

# **Health Care Payment System - Year in Review 2022**

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The Delaware Workers' Compensation Health Care Payment System (HCPS) marked its thirteenth anniversary on May 23, 2022. The 6 major components of the HCPS, which fall under the purview of the Workers' Compensation Oversight Panel and its subcommittees, are:

1. A Fee Schedule
2. Health Care Practice Guidelines
3. A Utilization Review program
4. A Certification process for health care providers
5. Forms for employers and health care providers
6. Data Collection

## **Workers' Compensation Oversight Panel:**

The 24 member WCOP contains representatives from the medical, legal, labor, business, and insurance communities, including the Secretary of Labor and Insurance Commissioner. Since its expansion in July 2014, the Panel has convened without one of the "insurance carrier" representatives. Currently, the Panel has two Public Member vacancies and one Medical Society – At Large vacancy.

In 2022, the WCOP met 4 times. Its subcommittees met 8 times; smaller groups of the subcommittees met 14 times.

The WCOP is in the process of updating/revising the Practice Guidelines and the Introduction & Fee Schedule Guidelines bringing them up to date with current medical guidelines and procedures. The Practice Guidelines and Introduction & Fee Schedule Guidelines were last updated in 2016. All proposed updates/revisions have been approved by the WCOP. The WCOP is in the process of completing the Regulatory Flexibility Analysis and Impact Statement Form to have the updates/revisions published for public comment.

**Medical Component:**

The OWC medical component supports the operations of the HCPS. In 2021, the medical component fielded a significant number of telephone calls, letters, and electronic mail regarding the HCPS. These contacts primarily came from the “providers,” “carriers,” “other states/entities,” and “general” categories. Provider certification represented the largest number of contacts.

The Department of Labor’s website contains comprehensive information on all five components of the HCPS, as well as links to send e-mail questions, subscribe/unsubscribe to the ListServ, download the current certified health care provider list, view frequently asked questions, download the fee schedule data, download forms, access the Administrative Code (“the regulations”), access to the Workers’ Compensation Act and complete the required continuing education course for certified health care providers.

**Utilization review:**

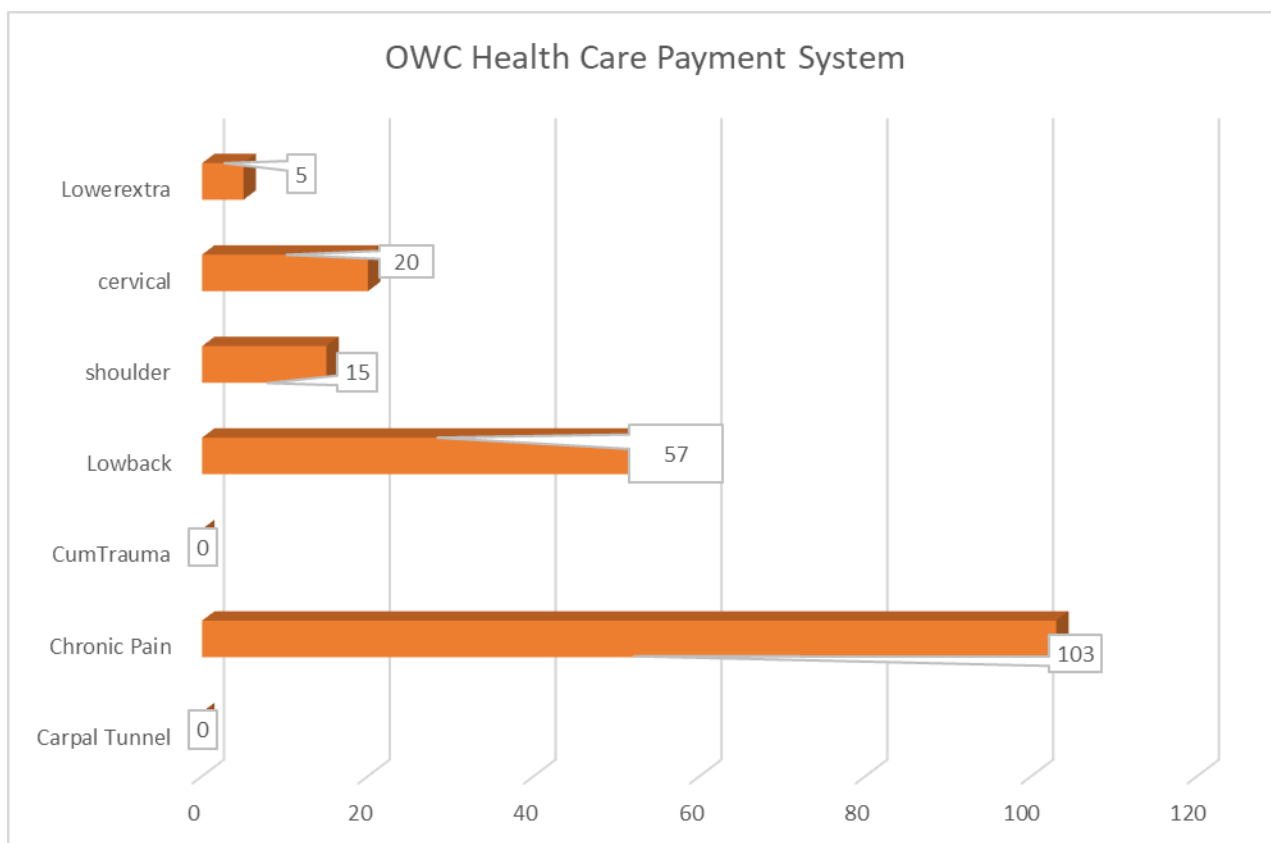
UR provides prompt resolution of compliance issues related to proposed or provided health care services within the practice guidelines for those claims acknowledged as compensable. Parties may appeal UR determinations to challenge the assumption that treatment specified within a practice guideline is the only reasonable and necessary course for a specific worker’s injury. OWC deems a UR request “ineligible” when the request falls outside the specified purview of UR or does not comply with the “required content, presentation and binding method” for materials submitted for review. The like-specialist reviewer deems a UR request “non-applicable” when the appropriate practice guideline does not address the treatment under review.

In 2021, OWC received 249 requests for utilization review. In 2022 YTD, OWC received 176 requests for utilization review, which constituted an 29.32% decrease. In 2021, OWC received 158 Petitions to Appeal a Utilization Review. These appeals were filed in approximately 63.45% of the cases where utilization review had been requested. The vast majority of these appeals were later withdrawn prior to being heard by the Industrial Accident Board. In 2022, OWC

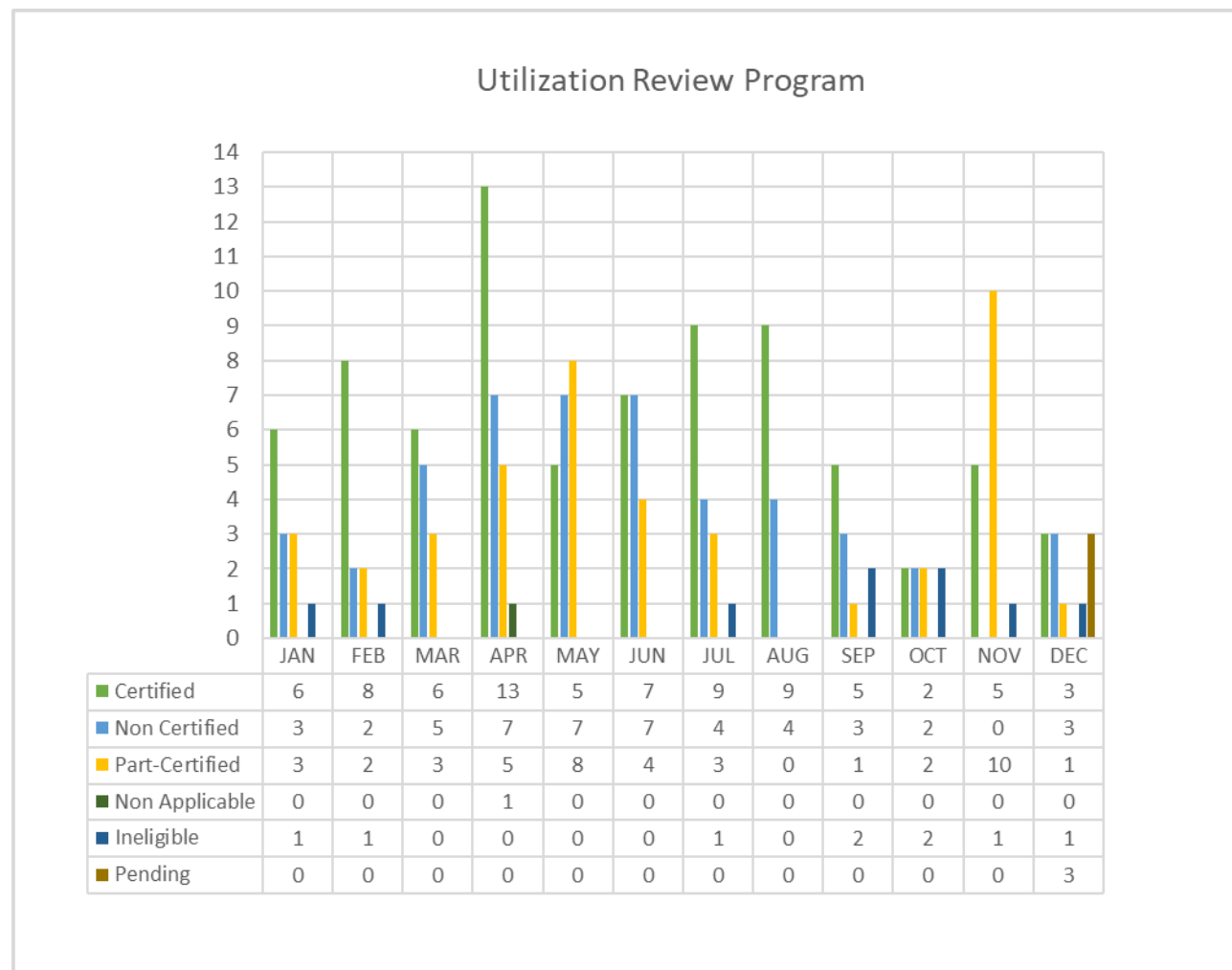
received 104 Petitions to Appeal a Utilization Review. The percentage rate of appeal for 2022 was approximately 40.91%.

Similar to the prior year, the great majority of appeals filed were later withdrawn before going to a hearing with the Industrial Accident Board.

Chronic pain treatment, particularly pain medication, continued in 2022 to represent the treatment most challenged through utilization review. OWC participates on the Prescription Drug Action Committee (PDAC), which continued moving forward its recommendations to reduce prescription drug abuse in Delaware.

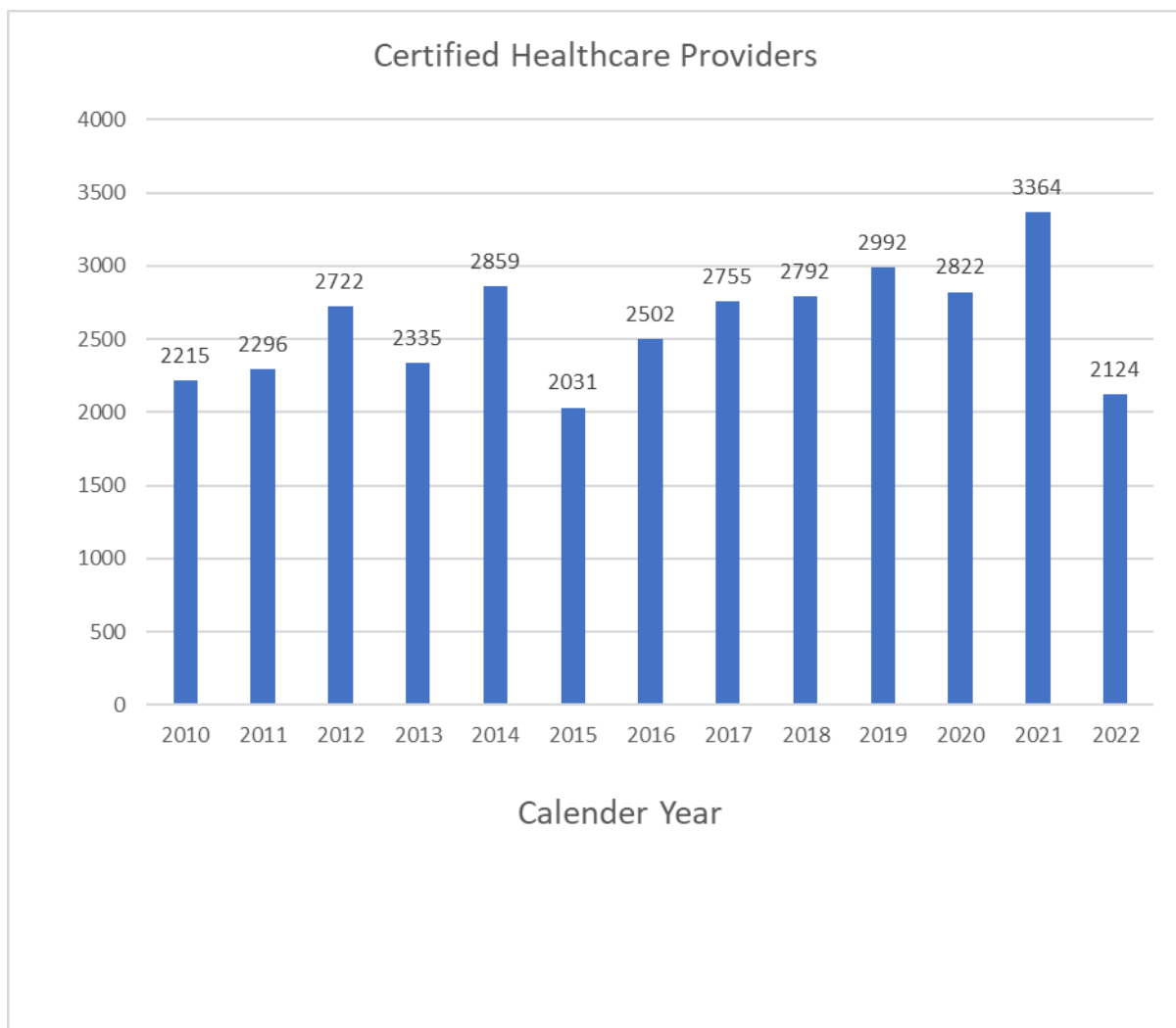


The OWC Utilization Review program continues to expand electronic processing of the requests for utilization review. The review requests continue to be sent to all our UR contractors via secure email instead of certified mail. All these processes allow the contractor to receive the UR request in a shorter period and OWC has been able to realize a large cost savings by no longer sending the large number of documents included in a UR request through certified mail. In addition to sending UR requests via secure email, additional savings have been attained by scanning and storing all UR files on a shared network drive eliminating the need for storage of paper files.





The number of certified health care providers has decreased within the last year. In 2021 there were 3,364 certified providers and that number has decreased by 36.86% to 2,124 active providers in 2022. There are 39 areas of practice represented among the certified providers. Biennial compliance with the statutorily mandated continuing education course was the most common reason providers lost their certification. The anchor date for completion of the course will remain the provider's professional license renewal date. 2022 marked the ninth year of this change, which helps providers' better track the recertification deadline, also the Workers Compensation Provider Certification Course was revamped to reflect any Workers Compensation regulation that may have occurred during the previous and current year.



# **Office of Workers' Compensation**

## **Workers' Compensation Specialists**

The workers' compensation Specialists scheduled 3,997 hearing in 2022. They also met with over 20 unrepresented (pro-se) claimants that were applying for workers' compensation benefits. The Specialists also field escalated calls from claimants, employers, attorneys and insurance companies during the course and scope of their daily job function.

## **OWC Labor Law Enforcement Unit:**

Since its inception in Spring of 2021, the departments three LLEOs have continued to positively impact the workers within the State of Delaware. In 2022 they were credited with securing 344 WC insurance policies from employers who previously were not covered and therefore not paying the Statement of Premium Tax to the WC Fund. This equates to a minimum estimate of 2,560 employees who were previously not covered in the event of an industrial work accident. The officers mailed over 1,000 compliance letters and scheduled 68 hearings to compel employers to provide employees WC insurance. As a result of those hearings, the Industrial Accident Board assessed fines totaling \$455,500.00 against non compliant employers.

## **OWC Administrative Support Unit:**

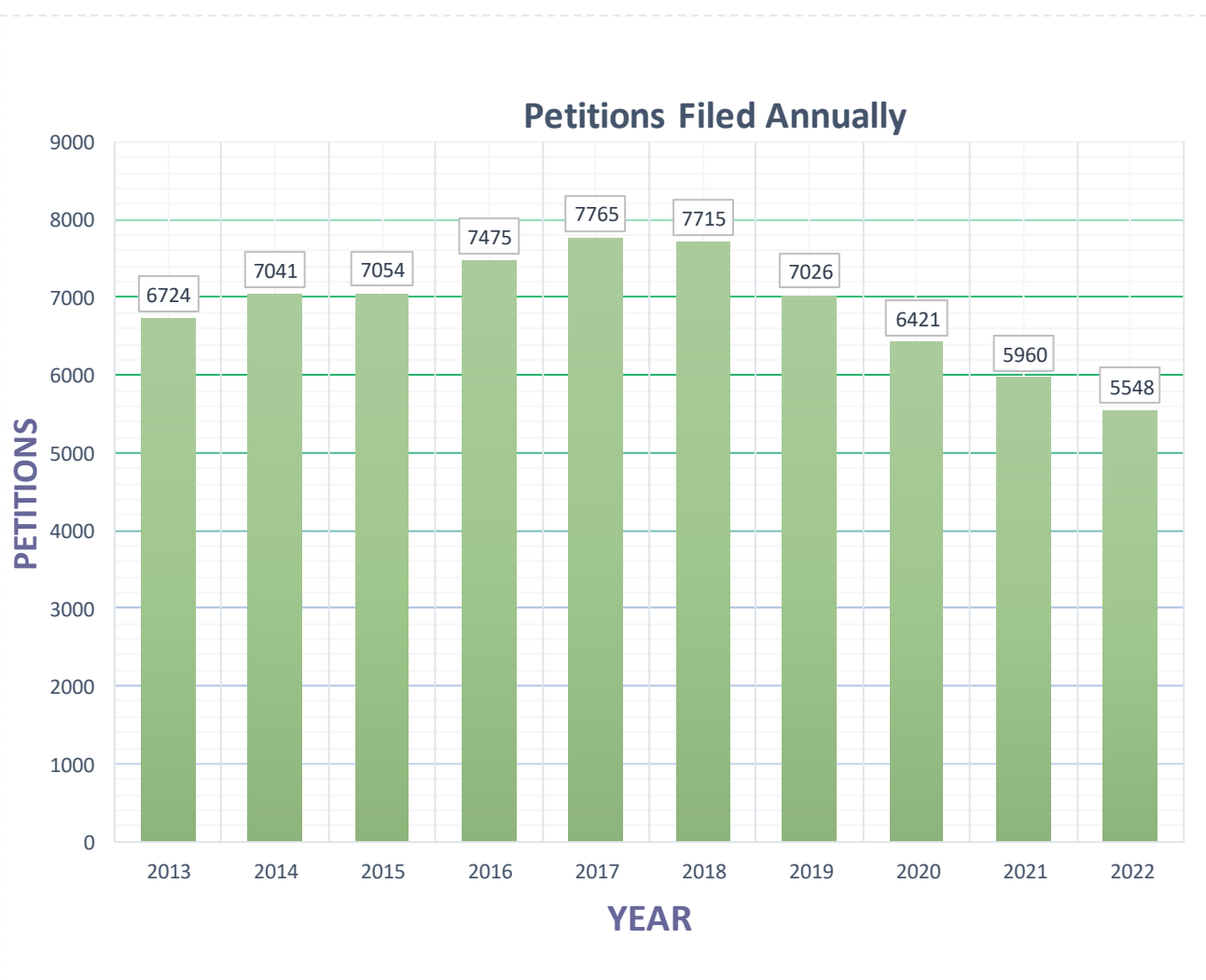
The Office of Workers' Compensation processed 2156 requests for copies of public documents. This is down 22% from last year. OWC processed 12,038 First Report of Injury. This represented a 7% decrease in reported injuries for 2022 vs 2021. The OWC processed 3241 agreements and 4656 receipts. The office answered 4702 calls, which represents 80% of all calls coming into the IA main number speaking to a live person.

The OWC was also tasked with collection of the semi-annual tax assessment based on Statement of Premiums (revenue for the Workers' Compensation Fund),

the semi-annual Administrative Assessment based on the operating expenses of the unit as it relates to the Direct Paid Losses of the Insurance companies (the OWC funding source for our daily operations) and the quarterly self-insured tax which goes to the general fund.

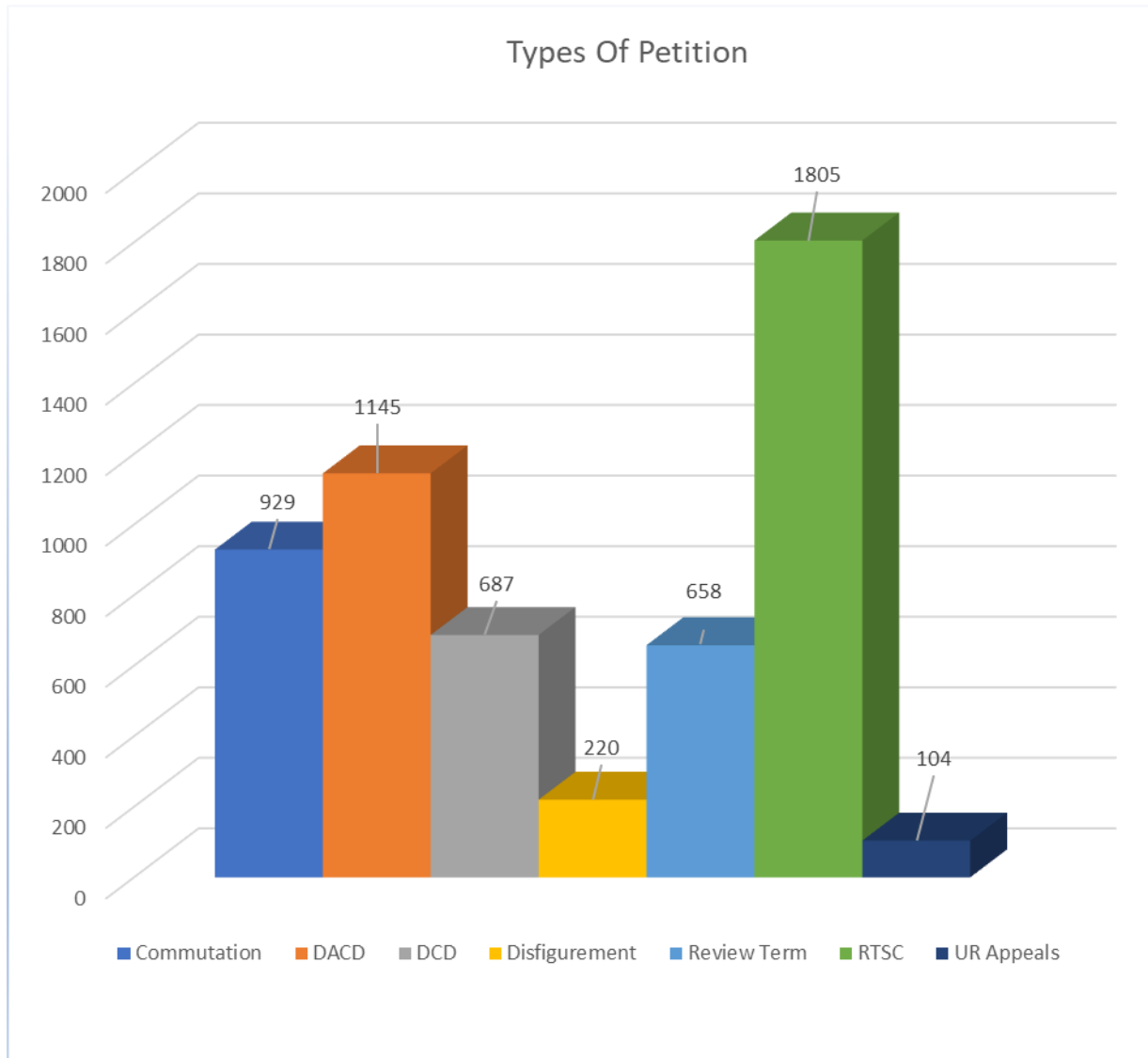
## Petitions Filed Annually

During 2022, a total of 5548 petitions were filed. This is a decrease of 7% compared to 2021. Filed petitions have continued to drop since the high in 2018.



## Types of Petitions

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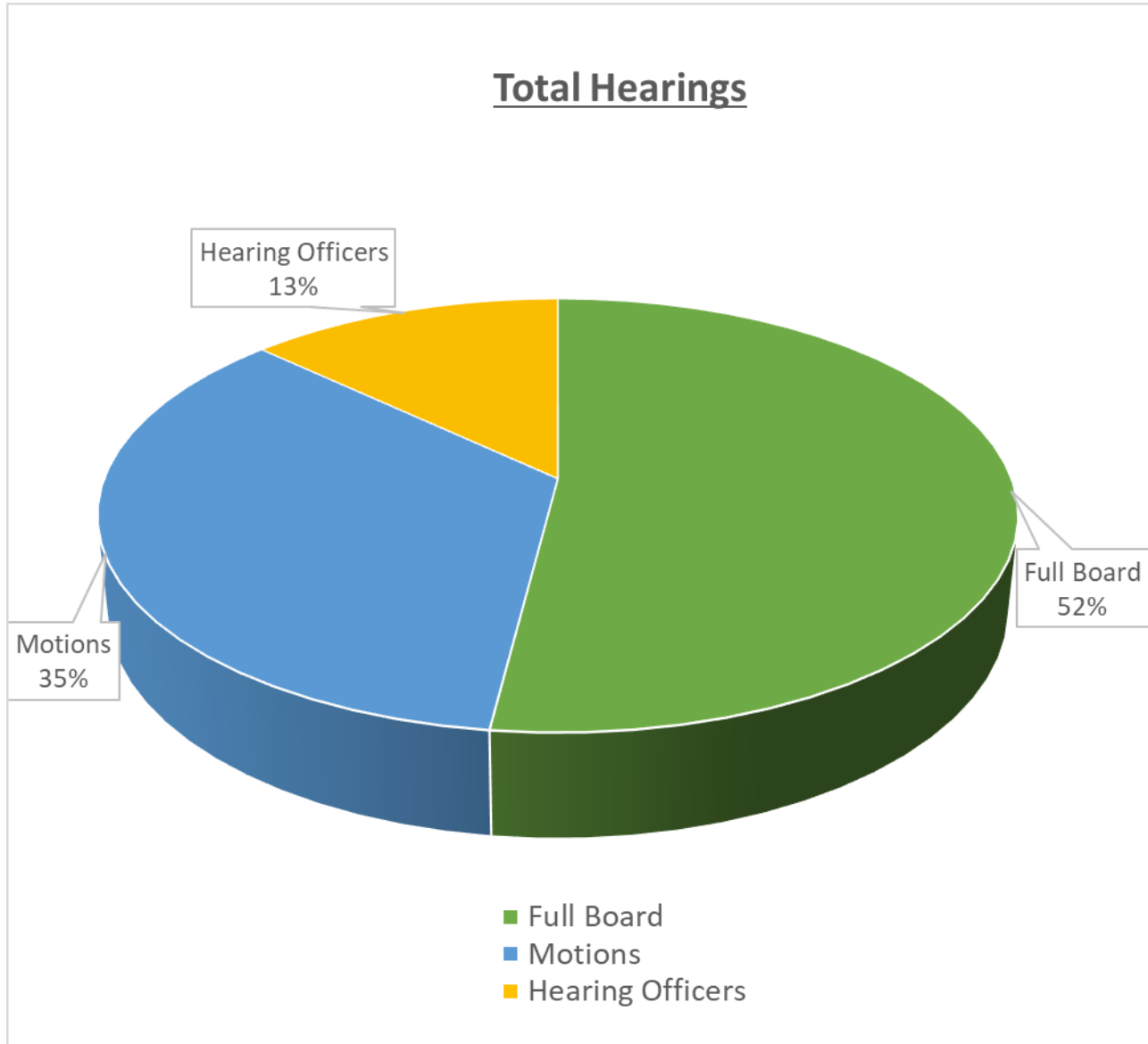
## Petitions Heard by the Board/Hearing Officers

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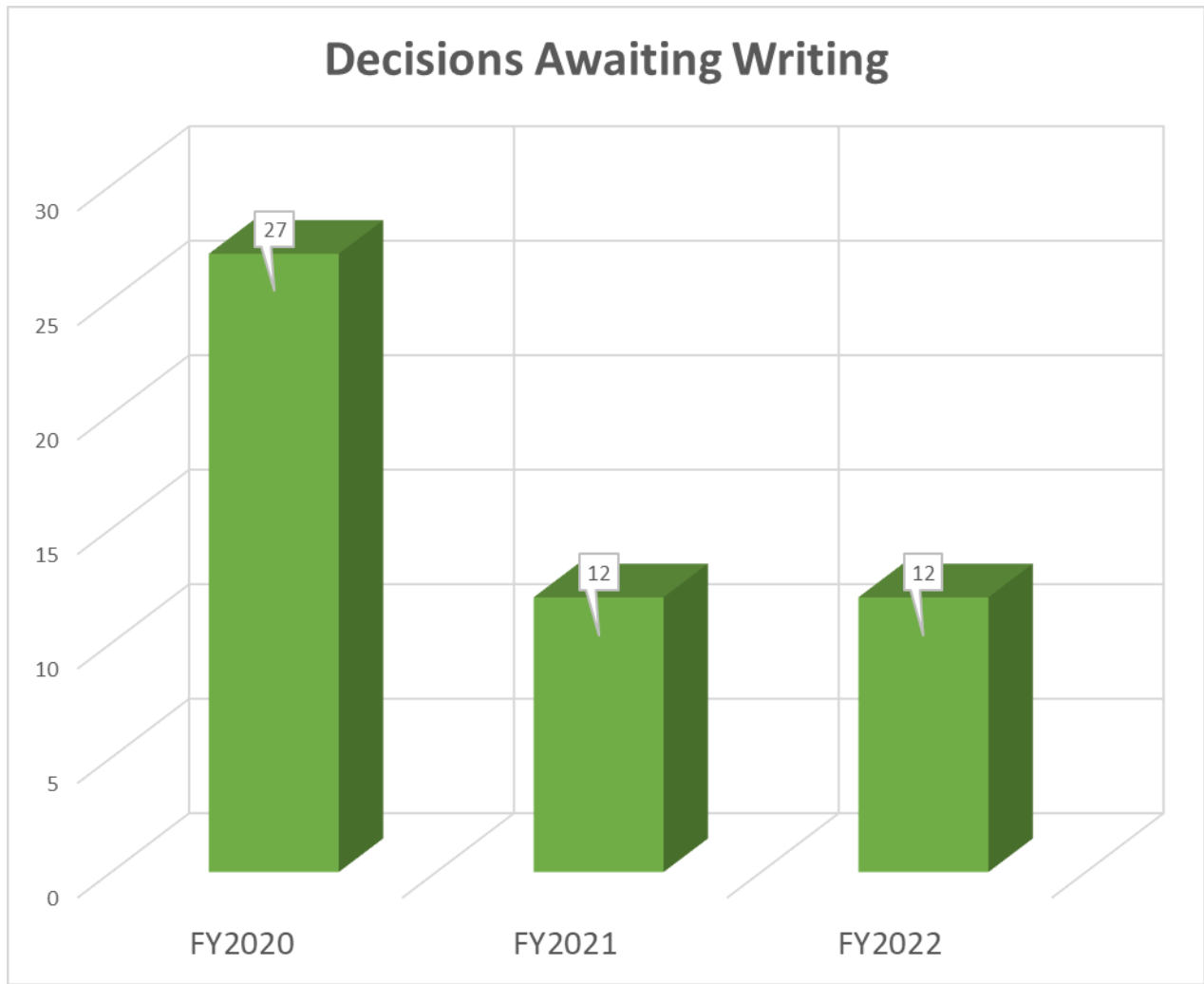
As seen in the chart on page 11, the number of petitions filed annually decreased 7% in calendar year 2022, as compared to 2021; while there was a decrease of 5% in Petitions heard in FY22. This statistic is for all petitions regardless of hearing type.



285 Merit hearings were conducted in 2022, of which 57 were conducted by solo Hearing Officers. Of the 285 Merit Hearings, 44 had multiple petitioners heard. There were 932 commutations reviewed by a solo Hearing Officer in 2022. This represents a 18% increase in commutation settlements.

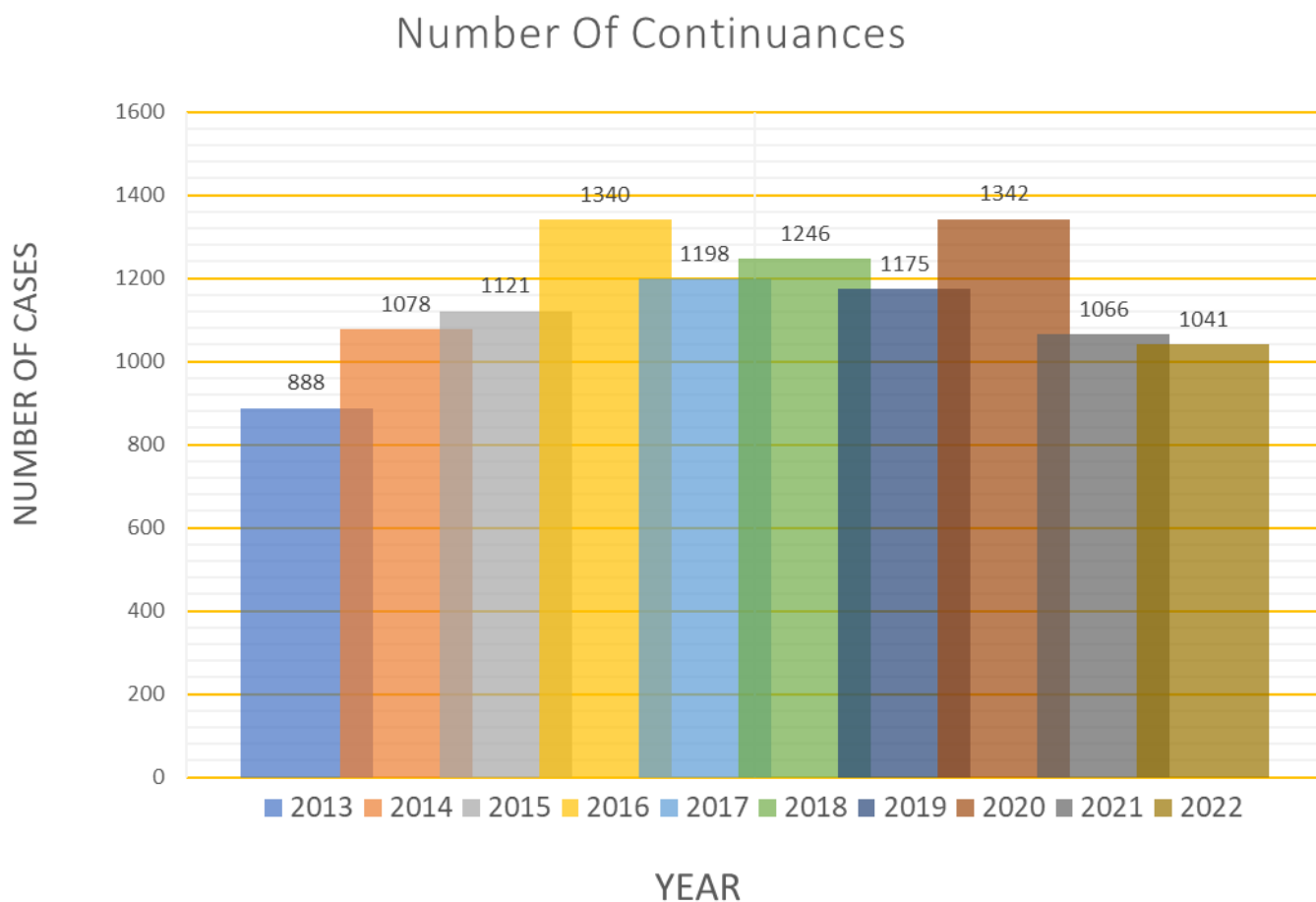


Currently, there are 12 decisions in the queue awaiting writing. During the year of 2021 and going into 2022, the OWC is “cleaning up” the entries of consolidated hearings to reflect a more accurate chart in our SCARS system.



# Continuances

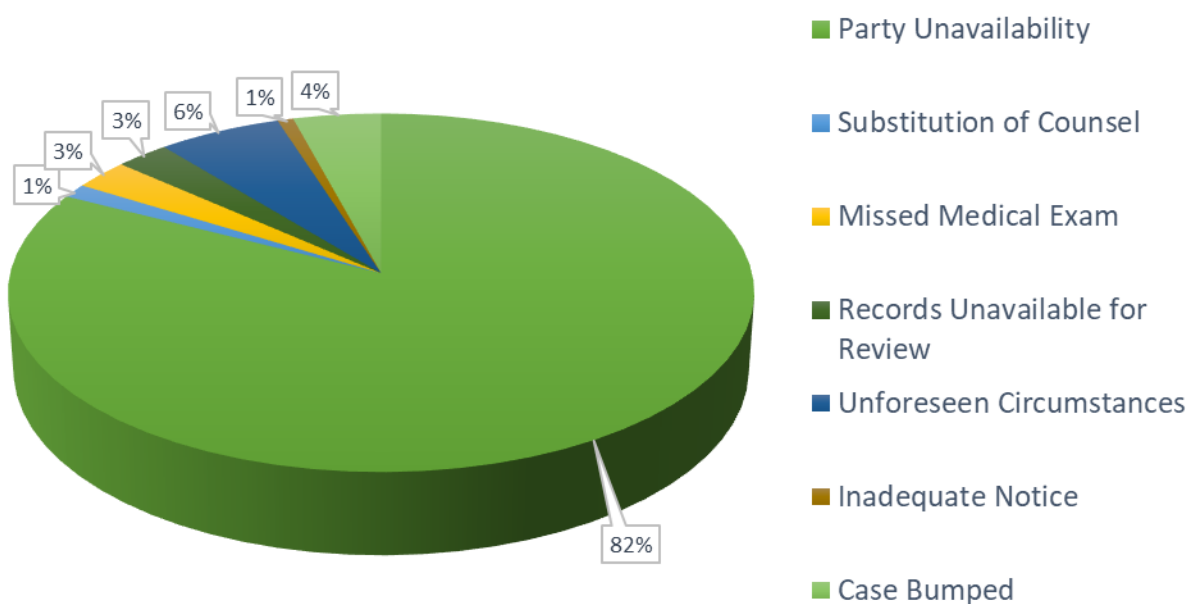
In 2022, a total of 1,041 continuances were granted, which represents a 2% decrease from the 1,066 continuances granted in 2021. The vast majority of continuances continue to be caused by the unavailability of a medical witness and due to the pandemic.





Grounds for Continuances	Number of Occurrences
The unavailability of a party, attorney, material witness or medical witness for reasons beyond their control (illness, conflicting court appearance, emergency)	859
A justifiable substitution of counsel for a party	13
Any unforeseen circumstance beyond the control of the parties:	
• Employee missed employer-scheduled medical exam	28
• Records unavailable for review by parties prior to hearing	27
• Unforeseen circumstances	62
• Inadequate notice	8
• <i>Case bumped</i>	44

**Type of Continuance**



## Board Member Activities

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The following table shows the number of days individual board members were scheduled to conduct hearings, as well as the number of days they actually conducted hearings in 2022. Scheduled days versus actual days differ due to case settlements and continuances.

Board Member	Number of Days Scheduled to Conduct Hearings	Number of Days Actually Conducted Hearings
Daniello*	76	21
Dantzler	122	47
D'Anna	160	61
Freel*	32	17
Hare	125	70
Hartranft	151	56
Hayes*	100	37
Mauil	131	55
Mitchell	178	66
Murowany	164	76
Wilson	166	47
<b>Total:</b>	<b>1405</b>	<b>553</b>

- J. Daniello rejoined the IAB from April, 2022 till October 24, 2022
- V. Hayes was appointed to the IAB effective February, 2022
- B. Freel was rehired effective November 9, 2022

The following table shows the number of Hearings on the Merits conducted by each Board Member where a decision has been rendered. This chart does not include Legal Hearings; and multiple petitions heard within the same hearing.

Two members of the Board sit for each Hearing.

<b>Board Member</b>	<b>Number of Hearings on the Merits</b>
Daniello	17
Dantzler	25
D'Anna	44
Freel	13
Hare	49
Hartranft	47
Hayes	28
Mauil	37
Mitchell	56
Murowany	54
Wilson	28
<b>Total</b>	<b>398</b>

## **Completed Caseload of Individual Hearing Officers**

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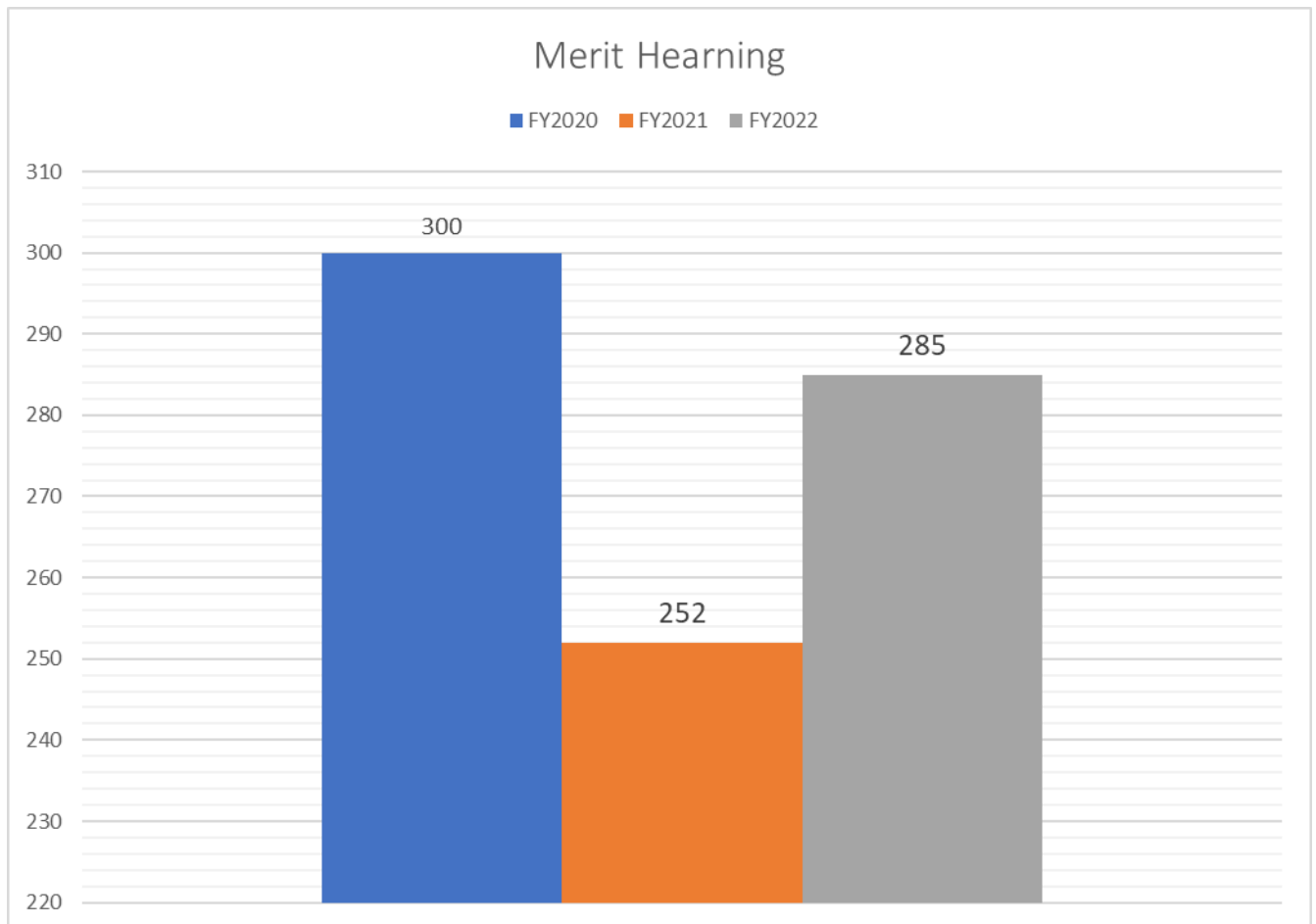
<b>Hearing Officer</b>	<b>Number of Decisions, Orders and Rearguments Written</b>
E. Boyle	33
J. Bucklin	41
A. Fowler	43
S. Mack	29
J. Pezzner	37
J. Schneikart	32
H. Williams	46
K. Wilson	38
C. Baum, Chief	72
<b>Total</b>	<b>371</b>

In 2022, a hearing officer conducted one workers' compensation mediation pursuant to DEL. CODE ANN. tit. 19, § 2348A. It was concluded successfully.

## Compliance with Hearing & Decisional Deadlines

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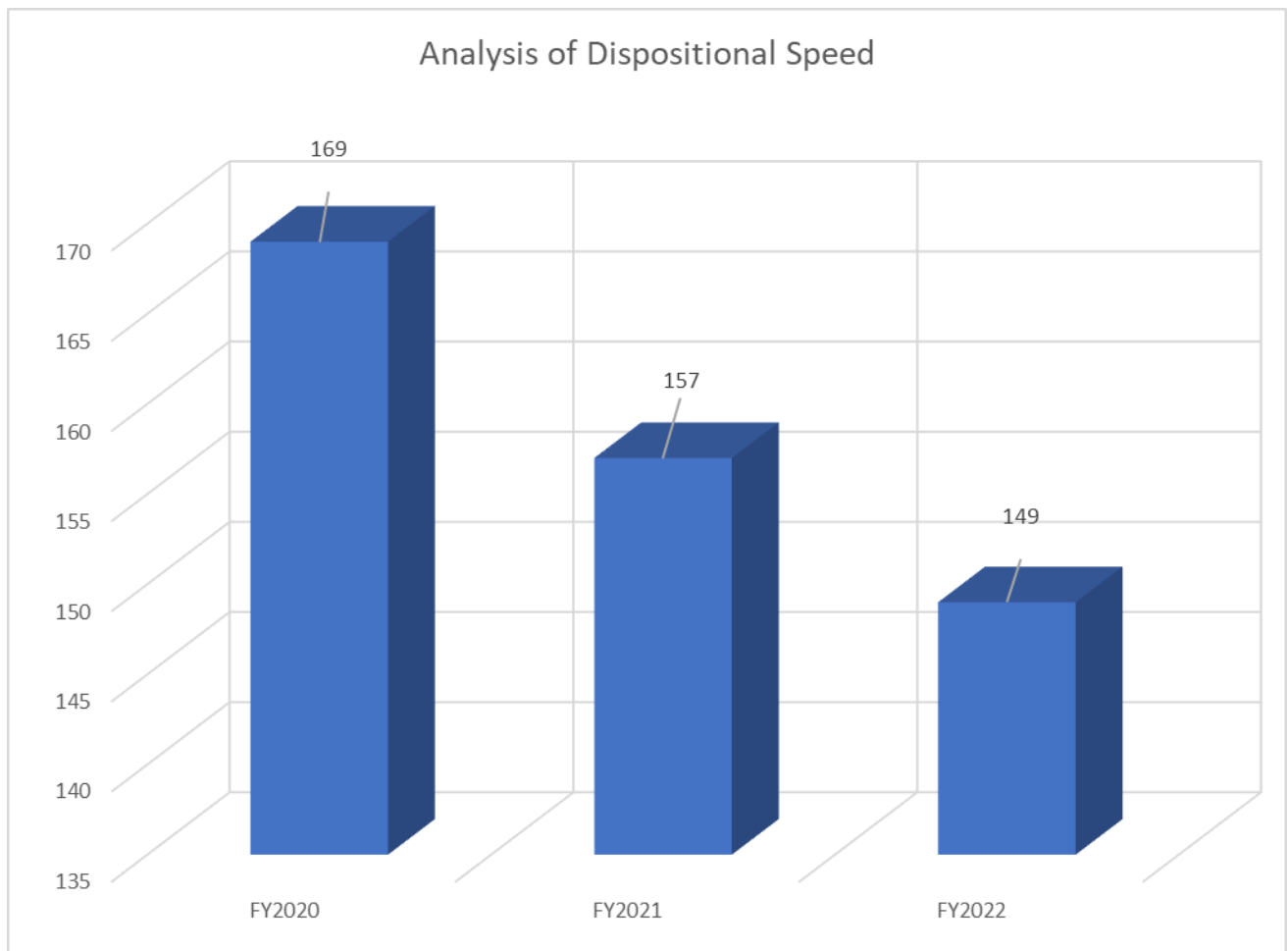
In 2022, 285 cases were heard which required a written decision within 14 days from the IAB or hearing officers. The number of appeals continued to remain low, with only 35 appeals in 2022.



## Analysis of Dispositional Speed

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In 2022, the average dispositional speed for processing all petitions (from the filing of the petition to the issuance of the decision) was 149 days, compared to 157 in 2021. A slight improvement (5%). The agency is continuing its efforts to find innovative ways to reduce this number by processing cases more quickly and efficiently and increasing the speed of decisions.



# Summary of Appeals

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(Status of appeals taken as of December 31, 2022)

In the last five years, the Board (or Hearing Officers) have rendered 1,494 decisions on the merits. Of those decisions, 208 (approximately 13.92%) were appealed (an average of 41.6 per year). 180 of those appeals have been resolved. Only 30 decisions have been reversed and/or remanded, in whole or in part. This represents a “reversal rate” of only about 2.01% of all decisions rendered in those five years.

Year Appeal Taken In:	2018	2019	2020	2021	2022
Total Number of Decisions:	338	358	254	269	275
Total Number of Appeals:	46	47	45	35	35
Affirmed:	15	14	22	14	4
Reversed and/or Remanded:	10	9	6	4	1
Dismissed/Withdrawn:	21	23	17	16	4
Pending: <sup>1</sup>	0	1	0	1	26

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<sup>1</sup> For purposes of these statistics, an appeal is no longer considered “Pending” once a Superior Court decision has been issued. Some Superior Court decisions have been appealed to the Delaware Supreme Court. If a Supreme Court decision is different from that given by the Superior Court, the statistics will be updated to reflect the final holding. Therefore, for example, while no cases are “Pending” from 2018, some of those appeal results may change in the future because of decisions by the Supreme Court.

# Summary of Appeals, Five Year Cumulative

(Status of appeals taken as of December 31, 2022)

Five-Year Cumulative	
Total Number of Decisions:	1494
Total Number of Appeals:	208
Affirmed:	69
Reversed and/or Remanded	30
Dismissed/Withdrawn	81
Pending:	28



# Departmental Recommendations

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## **Outreach:**

OWC continues to work to address the problem of employers operating in Delaware without workers' compensation insurance coverage. Our efforts began and continue with steps to educate employers about workers' compensation and what is required of them. New pamphlets and videos are planned for 2023 to give employers an understanding of the requirements of the State of Delaware. This educational tool will address requirements for both in-state employers and employers out of state that are conducting business within Delaware. OWC is also reviewing current workers' compensation statutes to ensure that they contain the tools necessary to pursue non-compliant companies.

## **Self-Insurance:**

The Office of Workers' Compensation is continuing its review of the workers' compensation self-insurance program in its entirety. When an employer is self-insured, the employer takes on the liability of paying any costs associated with a workers' compensation injury suffered by one of its employees instead of those costs being handled through an insurance carrier. OWC's immediate concern is to address the resulting situation for workers' compensation claimants when a self-insured employer files for bankruptcy. Even though self-insured employers are required to post a surety bond, OWC is finding that the bond amount is insufficient to cover the payment of all workers' compensation claims remaining after the company files for bankruptcy. This includes both payment for medical expenses as well as any indemnity benefits payable to the injured worker.

Another concern is how our statutes do not specify how the bond amount is to be calculated for self-insured employers. OWC is looking at having some consideration of the size of the company and the nature of the company's work.

A third area to be addressed is how the current statutes do not adequately address the way claims are to be paid from the bond proceeds when a self-insured employer does file for bankruptcy. OWC would also like to address the lack of requirements for an employer to be granted self-insured status as well as the lack of a periodic review of an employer's self-insured status and whether that status or bond amount continues to be appropriate for the employer.

### **Workers' Compensation Act:**

The WC Act in its entirety has not had a major revision since 1997. The OWC is looking to update the Act in its entirety. These modifications are necessary to conform and update with changes in technology, agency responsibilities as well as the Workers' Compensation Environment/Landscape.